Cases, Regulations and Statutes

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business plan is limited to the on-farm heirs (and the parents). That assures that the day-to-day decision making will be made by those intimately involved with the farming or ranching operation. The on-farm heirs and the parents, so long as the parents are able to contribute meaningfully to the management of the operation.

The landowning entity, on the other hand, is owned potentially by the entire family – off-farm heirs as well as the on-farm heirs and the parents so long as the parents are able and willing to be involved.

Both entities should have exit plans agreed upon at an early stage. Younger generations involved in the farming entity, especially those who have done well economically, may want to try something else after 20 or 30 years on the farm or ranch. The off-farm heirs, may be content to leave their inherited shares in the business or may decide for various reasons to shift their investment in part or all together into a different venue. Carefully drafted provisions can assure a fair and equitable outcome.

Importance of annual valuation. Perhaps the most important part of the overall business plan is to require an annual valuation of every asset owned by the entire operation. Often referred to as “a periodically negotiated fixed price,” the valuation is carried out annually with the involvement of every member with an interest in the single entity, if that is the plan, or the two entities discussed above including the off-farm heirs. Such valuations are acceptable, tax-wise, if the basic requirements are met. The governing legislation laid down the general rule that property is to be valued without regard to any option, agreement, restriction or “other right” which sets the price at less than fair market value of the property but that general rule does not apply if it is a bona fide business arrangement, it is not a “device” to transfer value to family members for less than full consideration and the terms are comparable to “similar” arrangements entered into in an arm’s length transaction.

If no one wishes to be involved with an operating farm or ranch

If no one chooses to be involved either on an active, day-to-day basis, or as an owner of farm or ranch land rented to a tenant or tenants, the issue may come down to how to divide up the real property to avoid a “like-kind” exchange (which could run the risk of having a like-kind rule invoked). Under that rule, involving a like-kind exchange of property with a related person, a disposal of the property within two years results in recognition of any gain involved. That can be avoided so long as the exchange does not involve a debt security and the property is not received that differs “materially. . . in kind or extent “ from the partitioned property.

ENDNOTES

1 As a footnote to that statement, my wife, Darlene, and I convened a two-day conference with our two off-farm heir sons earlier this year to discuss what we had in mind.
4 I.R.C. § 2703(b).
5 I.R.C. § 1031(f)(1).
6 Id.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

LIEN AVOIDANCE. The debtor had originally filed for Chapter 13 and listed $13,800 of property. The IRS filed claims for $969,419.20 in unpaid taxes, listing $13,800 in secured claims, $424,310.15 as unsecured priority claims, and $531,309.05 as unsecured general claims. The trustee issued a report allowing the IRS’s original claim, and no objections were made to the IRS’s proofs of claim. The debtor’s case was converted to Chapter 11 and then converted to Chapter 7 and the trustee filed a report of no distribution. The debtor sought a ruling that all but $13,800 of the tax claims were discharged. The court cited Dewsnup v. Timm, 502 U.S. 410 (1992), for the rule that a Chapter 7 debtor may not “strip down” a lien to the value of the collateral securing it; therefore, the debtor could not discharge the IRS claims to the extent they were not secured by the debtor’s property. In re

FEDERAL FARM PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations amending the General Administrative Regulation--Subpart V--Submission of Policies, Provisions of Policies, Rates of Premium, and Non-Reinsured Supplemental Policies. The final regulations incorporate legislative changes to the Federal Crop Insurance Act (Act) stemming from the Agricultural Act of 2014, clarify existing regulations, lessen the burden on submitters of crop insurance policies, provisions of policies, or rates of premium under section 508(h) of the Act, provide guidance on the submission and payment for concept proposals under section 522 of the Act, provide provisions for submission and approval of index-based
weather plans of insurance as authorized by section 523(i) of the Act, and to incorporate changes that are consistent with those made in the Common Crop Insurance Policy Basic Provisions. 81 Fed. Reg. 53657 (Aug. 12, 2016).

POULTRY. The APHIS has adopted as final regulations amending the National Poultry Improvement Plan (NPIP), its auxiliary provisions, and the indemnity regulations for the control of H5 and H7 low pathogenic avian influenza. The final regulations clarify who may participate in the NPIP, amend participation requirements, amend definitions for poultry and breeding stock, amend the approval process for new diagnostic tests, and amend slaughter plant inspection and laboratory inspection and testing requirements. 81 Fed. Reg. 53247 (Aug. 12, 2016). TUBERCULOSIS. The APHIS has issued interim regulations amending the bovine tuberculosis regulations regarding state and zone classifications by reclassifying California as accredited-free. 81 Fed. Reg. 52325 (Aug. 8, 2016).

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a “deceased spousal unused exclusion” (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent’s DSUE amount to the spouse, the decedent’s estate was required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, on or before the date that is 9 months after the decedent’s date of death or the last day of the period covered by an extension. The decedent’s estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent’s gross estate was less than the basic exclusion amount in the year of the decedent’s death including any taxable gifts made by the decedent. The estate requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent’s DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. Ltr. Rul. 201632001, March 29, 2016; Ltr. Rul. 201632003, March 29, 2016; Ltr. Rul. 201632005, May 2, 2016; Ltr. Rul. 201632014, May 2, 2016; Ltr. Rul. 201632017, March 29, 2016; Ltr. Rul. 201632018, March 29, 2016; Ltr. Rul. 201633002, April 28, 2016, 201633004, April 27, 2016, 201633008, May 2, 2016, 201633010, April 12, 2016, 201633012, April 12, 2016, 201633026, May 4, 2016. SPECIAL USE VALUATION. The decedent’s estate included farmland and the executor hired an accountant to prepare the estate’s Form 706. The accountant failed to include the election for special use valuation of the farmland on the timely filed Form 706. Treas. Reg. § 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under Treas. Reg. § 301.91000-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Treas. Reg. § 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. The IRS granted the extension of time to file an amended Form 706 to make the special use valuation election. Ltr. Rul. 201633001, April 25, 2016.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The taxpayer operated a sole proprietorship consulting business on the cash basis of tax accounting. The taxpayer hired independent contractors to provide services for the taxpayer’s clients. The taxpayer often paid the independent contractors in one tax year and received payment for their work from clients in a following tax year. The taxpayer did not claim a deduction for the payments made to the independent contractors until the tax year in which the client paid for the services, even though the independent contractor was paid in a prior tax year. Under Treas. Reg. § 1.446-1(c)(1)(iv)(a), if income is reported on the cash method, expenses must also be reported on the cash method. Thus, the court upheld the IRS determination that the taxpayer improperly delayed claiming deductions for payments to independent contractors to any tax year other than the year the payments were made. The second issue in the case was whether I.R.C. § 481 applied because the IRS determination, upheld by the court, constituted a change in accounting method. The court noted that the taxpayer had consistently applied the method of claiming deductions for payments to independent contractors over several years; therefore, the IRS adjustment to the deductions in the tax years involved constituted a change of method of accounting under I.R.C. § 481. Nebeker v. Comm’r, T.C. Memo. 2016-155.

BUSINESS DEDUCTIONS. The taxpayer was a corporation owned by a limited partnership and a trust. The partnership was owned by one person owning 1 percent and the trust owning the remaining 99 percent. The taxpayer had purchased two businesses own by one person, the husband of the 1 percent owner of the partnership. The trust had the couple’s children as beneficiaries. The taxpayer never paid any dividends, had no employees and had no contracts with independent contractors. After the sale of the husband’s two businesses to the taxpayer, the husband performed consulting services to the taxpayer. The husband was paid by checks made out to cash and for less than $10,000. The taxpayer did not sign any contract with the husband nor issue any Form 1099-MISC for the amounts paid to the husband. The court found that the taxpayer failed to provide any evidence to substantiate that the payments were made for any actual consulting services or any evidence as to how the payment were determined. Therefore, the court held that the IRS properly disallowed the deductions for the consulting fees. Little Mountain Corp. v. Comm’r, T.C. Memo. 2016-147.
DEPENDENTS. The taxpayer had two daughters by a first wife and claimed the exemption for both daughters as dependents. Their divorce decree provided custody of the children with the wife but provided that the taxpayer could claim the children as dependents for tax purposes so long as the taxpayer was current on child support payments. Although the taxpayer was current on the child support payments, the ex-spouse still claimed the two daughters as dependents on her tax return. The IRS then denied the dependency exemption for the two children on the taxpayer’s return. The ex-wife did not sign a Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent. The court held that neither daughter was a “qualifying child” under I.R.C. § 152(d)(1)(C) because the children did not reside with the taxpayer during the tax year. In addition, the taxpayer was not entitled to the exemptions for the children because the taxpayer did not include a Form 8332 or similar document signed by the former spouse. Cappel v. Comm’r, T.C. Memo. 2016-150.

DOMESTIC SERVICE EMPLOYEES. In a Chief Counsel Advice letter, the IRS ruled that companion sitters are individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled. A person engaged in the trade or business of putting the sitters in touch with individuals who wish to employ them (e.g., a companion sitting placement service) will not be treated as the employer of the sitters if that person does not receive or pay the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis. Companion sitters who are not employees of a companion sitting placement service are generally treated as self-employed for all federal tax purposes. However, a sitter not affiliated with a companion sitting placement service may be considered to be an employee of the individual for whom the sitting is performed, depending on whether the individual for whom the sitting is performed has the right to direct and control the sitter. CCA 201633034, July 19, 2016.

EMPLOYEE EXPENSES. The taxpayer was a college professor and the taxpayer’s spouse was a college librarian. The taxpayers claimed deductions for depreciation, cellphones, internet, television, books, DVDs, CDs, and computer expenses. The taxpayers argued that most of the expenses were employment expenses because the taxpayers used the devices and services to gain general knowledge needed in their jobs. The deductions for the internet, television, books, DVDs and CDs were disallowed because these were personal, living or family expenses. The depreciation deduction was denied because the taxpayers failed to provide evidence to support the deductions. The deductions for the cellphones and computer expenses were denied because the taxpayers failed to substantiate any use in their employment. Tanzi v. Comm’r, T.C. Memo. 2016-148.

HEALTH INSURANCE. The IRS has published information about the definitions of affordable coverage and minimum value coverage. In general, under the employer shared responsibility provisions of the Affordable Care Act, an applicable large employer may either offer affordable minimum essential coverage that provides minimum value to its full-time employees and their dependents or potentially owe an employer shared responsibility payment to the IRS. Affordable coverage: If the lowest cost self-only health plan is 9.5 percent or less of a full-time employee’s household income then the coverage is considered affordable. Because an employer likely will not know an employee’s household income, for purposes of the employer shared responsibility provisions, employers can determine whether they offered affordable coverage under various safe harbors based on information available to them. Minimum value coverage: An employer-sponsored plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. Under existing guidance, employers generally must use a minimum value calculator developed by the Department of Health and Human Services and the IRS to determine if a plan with standard features provides minimum value. Plans with nonstandard features are required to obtain an actuarial certification for the nonstandard features. The guidance also describes certain safe harbor plan designs that will satisfy minimum value. Health Care Tax Tip 2016-65.

INNOCENT SPOUSE RELIEF. The taxpayer was an attorney who had participated in an arbitration negotiation and had the potential of receiving substantial fees for the negotiation. The taxpayer contributed the potential arbitration award fees to a personal foundation run by the taxpayer and claimed charitable deductions based on the transfer. The IRS denied the charitable deduction and assessed a deficiency in addition to taxes owed but not paid by the taxpayer. The taxpayer filed for innocent spouse relief. The Tax Court denied innocent spouse relief under I.R.C. § 6015(b), (c), and (f) because the tax deficiency was due entirely because of the taxpayer’s contribution of the taxpayer’s negotiation fees to the foundation and accepted by the taxpayer on behalf of the foundation. The Tax Court found that none of the taxes were attributable to the taxpayer’s spouse’s income. On appeal, the appellate court dismissed the appeal as moot because the IRS had written off the taxes and released the tax lien securing the tax claim. Stanwyck v. Comm’r, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,372 (9th Cir. 2016), dismissing appeal of, T.C. Memo. 2012-180.

During the three years of marriage, the taxpayer and spouse had income primarily from the spouse’s sole proprietorship business. The taxpayer was not involved in the spouse’s business. In addition, the spouse controlled all of the family accounts and the taxpayer had to ask the spouse for money to pay family expenses. The spouse arranged for the tax returns for the three years and the taxpayer merely signed the returns at the spouse’s direction. The spouse did not pay any of the taxes shown as owed on the three returns. The couple were divorced in the fourth year. The taxpayer sought innocent spouse relief from the assessment of taxes owed for the three years the taxpayer was married. The court examined the seven factors provided by Rev. Proc. 2013-34, 2013-2 C.B. 397 and held that the taxpayer was entitled to innocent spouse relief because (1) the taxpayer was no longer married to the spouse; (2) the taxpayer did not have knowledge that the spouse would not pay the taxes owed; and (3) the taxpayer has since been in full compliance with all federal tax law. The court held that the other factors of Rev. Proc. 2013-34 were neutral as to the taxpayer. Simonetta v. Comm’r, T.C. Summary Op. 2016-43.

At the end of 2009, the taxpayer was married but living in Wisconsin while the spouse lived in Florida. In 2009, the spouse was self-employed with little income and the taxpayer
had income from employment while in Florida in early 2009 and income from Wisconsin after the taxpayer moved. The taxpayer also had interest income from the taxpayer’s personal bank account and cancellation of debt income from discharge of indebtedness on the taxpayer personal credit card. The taxpayer let the spouse handle the preparation of the 2009 joint return but failed to tell the spouse about the income from employment in Florida, the interest income and the cancellation of debt income. Thus, the joint return failed to claim all of the taxable income from the taxpayer. The taxpayer did not review the tax return but signed it. The spouse and taxpayer filed for innocent spouse relief after the IRS assessed additional taxes based on the unreported income. The court looked at relief under I.R.C. § 6015(b) and held that the taxpayer was not entitled to relief under I.R.C. § 6015(b) because the taxes owed were attributable solely to income of the taxpayer. The court also held that the taxpayer was not entitled to relief under I.R.C. § 6015(c) because the taxes owed were attributable solely to income of the taxpayer. The court held that the taxpayer was not entitled to equitable relief under I.R.C. § 6015(f) because the taxes owed were attributable solely to income of the taxpayer. Bullock v. Comm’r, T.C. Summary Op. 2016-44.

IRA. The taxpayer became an unemployed teacher in 2009 and in 2011 withdrew $15,000 from an IRA when the taxpayer was 50 years old. In 2011 the taxpayer took online courses in computer software instruction and in 2012 and in 2013, the taxpayer took computing courses at two colleges. The additional education enabled the taxpayer to find new employment as a teacher. The taxpayer did not include the $15,000 IRA distribution in taxable income for 2011. Although the taxpayer admitted that the distribution was income for 2011, the taxpayer argued that the 10 percent penalty for early withdrawals did not apply because the funds were used for higher education expenses. Under I.R.C. § 72(t)(7), “qualified higher education expenses” means higher education expenses (as defined in I.R.C. § 529(e)(3)) for education furnished to the taxpayer, the taxpayer’s spouse, any child of the taxpayer, or any child of the taxpayer’s spouse, at an eligible educational institution. The evidence showed that, in 2011, the taxpayer took online exams to qualify as a software instructor; however, the taxpayer did not provide any evidence of having enrolled in any classes or having paid for any books, tuition, fees or supplies. Thus, the court held that the taxpayer was not eligible for the qualified higher education expenses and the entire distribution was subject to the 10 percent penalty for early withdrawals. Parisi v. Comm’r, T.C. Summary Op. 2016-40.

INSTALLMENT AGREEMENT TO PAY TAXES. The IRS is proposing a revised schedule of user fees that would take effect on Jan. 1, 2017, and apply to any taxpayer who enters into an installment agreement. The proposal reflects the law that federal agencies are required to charge a user fee to recover the cost of providing certain services to the public that confer a special benefit to the recipient. Although some installment agreement fees are increasing, the IRS will continue providing reduced-fee or no-cost services to low-income taxpayers. The revised installment agreement fees of up to $225 would be higher for some taxpayers than those currently in effect, which can be up to $120. However, under the revised schedule any affected taxpayer could qualify for a reduced fee by making their request online using the Online Payment Agreement application on IRS.gov. Moreover, there would be no change to the current $43 rate that applies to the approximately one in three taxpayer requests that qualify under low-income guidelines. The IRS noted that the length of time that the first property was owned by the qualified intermediary was 17 months, much longer than has been allowed in similar cases, and indicated that a longer period could make such transactions ineligible for like-kind exchange treatment. Estate of Bartell v. Comm’r, 147 T.C. No. 5 (2016).

MOVING EXPENSES. The IRS has published information about moving expenses. In order to deduct moving expenses, a taxpayer’s move must meet three requirements: (1) The move must closely relate to the start of work. Generally, taxpayers can consider moving expenses within one year of the date they start work at a new job location. Additional rules apply to this requirement. (2) The taxpayer’s move must meet the distance test. The taxpayer’s new main job location must be at least 50 miles farther from the taxpayer’s old home than the taxpayer’s previous job location. (3) The taxpayer must meet the time test. After the move, the taxpayer must work full-time at the new job for at least 39 weeks in the first year. If the taxpayer is self-employed, the taxpayer must meet this test and work full-time for a total of at least 78 weeks during the first two years at the new job site. If the taxpayer’s income tax return is due before the taxpayer has met this test, the taxpayer can still deduct moving expenses if
the taxpayer expects to meet it. See Publication 521, Moving Expenses, for more information about these rules. If a taxpayer can claim this deduction, here are a few more tips from the IRS: Travel. Taxpayers can deduct transportation and lodging expenses for themselves and household members while moving from the old home to the new home. Taxpayers cannot deduct travel meal costs. Household goods and utilities. Taxpayers can deduct the cost of packing, crating and shipping things. Taxpayers may be able to include the cost of storing and insuring these items while in transit. Taxpayers can deduct the cost of connecting or disconnecting utilities. Nondeductible expenses. Taxpayers cannot deduct as moving expenses any part of the purchase price of the new home, the cost of selling a home or the cost of entering into or breaking a lease. See Publication 521 for a complete list. Reimbursed expenses. If the taxpayer’s employer later pays for the cost of a move that the taxpayer deducted on a tax return, the taxpayer may need to include the payment as income. Taxpayers report any taxable amount on the tax return for the year the taxpayer gets the payment. Address Change. Taxpayers should be sure to update the taxpayer’s address with the IRS and the U.S. Post Office. To notify the IRS file Form 8822, Change of Address. Premium Tax Credit. If the taxpayer or anyone in the taxpayer’s family purchased health coverage through the Marketplace and had advance payments of the premium tax credit paid in advance to the insurance company to lower the monthly premiums, it is had advance payments of the premium tax credit paid in advance to the insurance company to lower the monthly premiums, it is

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which elected to be taxed as a partnership. A member of the taxpayer died during the tax year but the taxpayer failed to make a timely election under I.R.C. § 754 to adjust the partnership basis in partnership property. The IRS granted an extension of time to file an amended return with the election. Ltr. Rul. 201632006, Feb. 29, 2016, Ltr. Rul. 201632007, Feb. 29, 2016, Ltr. Rul. 201632008, Feb. 29, 2016, Ltr. Rul. 201632009, Feb. 29, 2016.

PASSIVE ACTIVITY LOSSES. The taxpayer was employed as a real estate agent and personally owned and operated two residential rental properties. The taxpayer did not elect to treat the two activities as one activity. The rental activities generated only losses and the IRS denied a loss deduction for the properties as passive activity losses. The taxpayer argued that the taxpayer’s real estate agent activities should be included in the time spent on the rental properties, but the court held that the time spent on the real estate agent activities could not be added to the time spent on the rental activity unless the taxpayer made the election to treat the two activities as one. The taxpayer provided only reconstructed activity logs of the taxpayer’s work on the rental properties and the court disregarded most of the logs as unreliable; therefore the court upheld the disallowance of the loss deductions as passive activity losses. Gragg v. United States, 2016-2 U.S. Tax Cas. (CCH) ¶ 50,370 (9th Cir. 2016), aff’g., 2014-1 U.S. Tax Cas. (CCH) ¶ 50,245 (N.D. Calif. 2014).

PENSION PLANS. For plans beginning in August 2016 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.23 percent. The 30-year Treasury weighted average is 2.99 percent, and the 90 percent to 105 percent permissible range is 2.70 percent to 3.14 percent. The 24-month average corporate bond segment rates for August 2016, without adjustment by the 25-year average segment rates are: 1.51 percent for the first segment; 3.83 percent for the second segment; and 4.82 percent for the third segment. The 24-month average corporate bond segment rates for August 2016, taking into account the 25-year average segment rates, are: 4.43 percent for the first segment; 5.91 percent for the second segment; and 6.65 percent for the third segment. Notice 2016-47, I.R.B. 2016-35.

S CORPORATIONS

SECOND CLASS OF STOCK. The taxpayer was an S corporation which made disproportionate distributions to its shareholders in two tax years due to an error in the ownership percentage information used for calculating shareholder distributions. During those same years, the taxpayer made composite state tax payments on behalf of its shareholders, later determining the precise amount of state tax liability allocable to each shareholder. The taxpayer treated the state tax payments as interest-free, no-term loans to the shareholders, some of which have not yet been repaid. The taxpayer made corrective distributions and terminated its policy of treating the state tax payments as loans. The taxpayer’s articles of incorporation, bylaws, and shareholder agreements, confer identical rights to distribution and liquidation proceeds with respect to the taxpayer’s outstanding shares of stock. The IRS ruled that the taxpayer did not create a second class of stock causing termination of the Subchapter S election. Ltr. Rul. 201633017, April 1, 2016.

SAFE HARBOR INTEREST RATES

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TAX RETURN PREPARERS. The IRS has adopted as final regulations which set, effective Sept. 9, 2016, the annual fee for PTINs, which will change from $50 to $33 for both new applications and renewals. A $17 fee will be charged by a third-party vendor for new and renewal applications. The IRS will collect the $33 as a user fee to support program costs and a third-party vendor will receive $17 to operate the online system and provide customer support. 81 Fed. Reg. 52766 (Aug. 10, 2016).

TAX SCAMS. The Internal Revenue Service has published information alerting tax professionals to an emerging phishing e-mail scam that pretends to be from tax software providers and
tries to trick recipients into clicking on a bogus link. The e-mail scheme is the latest in a series of attempts by fraudsters to use the IRS or other tax issues as a cover to trick people into giving up sensitive information such as passwords, social security numbers or credit card numbers or to make unnecessary payments. In the new scheme identified as part of the IRS Security Summit process, tax professionals are receiving e-mails pretending to be from tax software companies. The e-mail scheme requests the recipient to download and install an important software update via a link included in the e-mail. Once recipients click on the embedded link, they are directed to a website prompting them to download a file appearing to be an update of their software package. The file has a naming convention that uses the actual name of their software followed by an “.exe” extension. Upon completion, tax professionals believe they have downloaded a software update when in fact they have loaded a program designed to track the tax professional’s key strokes, which is a common tactic used by cyber thieves to steal login information, passwords and other sensitive data. Although the IRS knows of only a handful of cases to date, tax professionals are encouraged to be on the lookout for these scams and never to click on unexpected links in e-mails. Similar e-mail schemes using tax software names have targeted individual taxpayers. IR-2016-103.

The IRS has published information on how tax return preparers can help protect clients and their businesses from identity theft by checking their PTIN Accounts to ensure the number of returns filed using their identification number matches IRS records. Criminals are increasingly targeting tax professionals, not only to steal client data but also to steal the professionals’ data such as PTINs, EFINs or e-Service passwords. The IRS has teamed up with state tax agencies and the tax industry for a “Protect Your Clients; Protect Yourself” campaign to help increase awareness among tax professionals. The IRS offers many preparers the ability to monitor “Returns Filed Per PTIN.” This information is available in the online PTIN system for tax return preparers who meet both of the following criteria. The return preparer must have: (1) A professional credential (Enrolled Agent, Certified Public Accountant, Attorney, Enrolled Retirement Plan Agent or Enrolled Actuary) or are an Annual Filing Season Program participant, and (2) at least 50 tax returns from the Form 1040 series processed in the current year. It is important to monitor this information even if a preparer does not prepare returns or only prepares a small number of returns. If there is no data shown, less than 50 returns have been processed with a PTIN. To access “Returns Filed Per PTIN” information, follow these steps: (1) visit http://www.irs.gov/ptin and log into a PTIN account; (2) from the Main Menu, find “Additional Activities;” (3) under Additional Activities, select “View Returns Filed Per PTIN;” (4) a chart labeled “Returns Per PTIN” should appear; (5) a count of individual income tax returns filed and processed in the current year will be displayed. The information in the “Returns Per PTIN” chart is updated weekly and it is important that preparers check this information regularly. If the number of returns processed is significantly more than the number of tax returns prepared and a preparer suspects possible misuse of a PTIN, complete and submit Form 14157, Complaint: Tax Return Preparer, to the IRS. IRS Security Awareness Tax Tip 2016-11.

TRUSTS. The IRS has issued a revenue procedure which contains a sample provision that may be included in the governing instrument of a charitable remainder annuity trust (CRAT) providing for annuity payments payable for one or more measuring lives followed by the distribution of trust assets to one or more charitable remaindernen. The IRS will treat the sample provision as a qualified contingency within the meaning of I.R.C. § 664(f). Thus, inclusion of the sample provision in the trust instrument does not cause the trust to fail to qualify as a charitable remainder trust under I.R.C. § 664.

Any CRAT containing the sample provision will not be subject to the “probability of exhaustion” test set forth in Rev. Rul. 70-452, 1970-2 C.B. 199, and applied in Rev. Rul. 77-374, 1977-2 C.B. 329. The “probability of exhaustion” test is used to determine whether a CRAT complies with the regulatory requirement applicable to all contingent charitable transfers that only a negligible chance exists that the charity will receive nothing. Rev. Proc. 2016-42, 2016-2 C.B. 269.

FARM ESTATE AND BUSINESS PLANNING
by Neil E. Harl

The Agricultural Law Press is honored to publish the revised 19th Edition of Dr. Neil E. Harl’s excellent guide for farmers and ranchers who want to make the most of the state and federal income and estate tax laws to assure the least expensive and most efficient transfer of their estates to their children and heirs. The 19th Edition includes all new income and estate tax developments.

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AGRICULTURAL TAX SEMINARS
by Neil E. Harl

Due to a worsening family medical need, Dr. Harl has been forced to cancel all 2016 seminars except the seminars in Ames, IA on August 24 and 25, 2016.

Dr. Harl regrets having to make this decision and any inconvenience to the folks who already registered for the cancelled seminars. Registrants for the cancelled seminars will be offered a full refund or the transfer of the registration to the seminars in Ames, IA. See details on the back page.
AGRICULTURAL TAX SEMINARS

by Neil E. Harl

August 24-25, 2016 - Quality Inn, Ames, IA

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country’s foremost authorities on agricultural tax law. The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days. On the first day, Dr. Harl will speak about farm and ranch estate and business planning. On the second day, Dr. Harl will cover farm and ranch income tax. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. A discount ($25/day) is offered for attendees who elect to receive the manuals in PDF format only (see registration form online for use restrictions on PDF files).

The topics include:

**First day**

**FARM ESTATE AND BUSINESS PLANNING**

New Legislation
Succession planning and the importance of fairness

**The Liquidity Problem**

Property Held in Co-ownership
Federal estate tax treatment of joint tenancy
Severing joint tenancies and resulting basis
Joint tenancy and probate avoidance
Joint tenancy ownership of personal property
Other problems of property ownership

**Federal Estate Tax**

The gross estate
Special use valuation
Property included in the gross estate
Traps in use of successive life estates
Basis calculations under uniform basis rules
Valuing growing crops
Claiming deductions from the gross estate
Marital and charitable deductions
Taxable estate
The applicable exclusion amount
Unified estate and gift tax rates
Portability and the regulations
Federal estate tax liens
Gifts to charity with a retained life estate

**Gifts**

Reunification of gift tax and estate tax
Gifts of property when debt exceeds basis

**Use of the Trust**

The General Partnership
Small partnership exception
Eligibility for Section 754 elections

**Limited Partnerships**

**Limited Liability Companies**

Developments with passive losses
Corporate-to-LLC conversions

**New regulations for LLC and LLP losses**

**Closely Held Corporations**

State anti-corporate farming restrictions
Developing the capitalization structure
Tax-free exchanges
Would incorporation trigger a gift because of severance of land held in joint tenancy? “Section 1244” stock
Status of the corporation as a farmer
The regular method of income taxation
The Subchapter S method of taxation, including the “two-year” rule for trust ownership of stock
Underpayment of wages and salaries
Financing, Estate Planning Aspects and Dissolution of Corporations
Corporate stock as a major estate asset
Valuation discounts
Dissolution and liquidation
Reorganization
Entity Sale
Stock redemption

**Social Security**

In-kind wages paid to agricultural labor

**Second day**

**FARM INCOME TAX**

New Legislation

**Reporting Farm Income**

Constructive receipt of income
Deferred payment and installment payment arrangements for grain and livestock sales
Using escrow accounts
Payments from contract production
Items purchased for resale
Items raised for sale
Leasing land to family entity
Crop insurance proceeds
Weather-related livestock sales
Sales of diseased livestock

New regulations for LLC and LLP losses

**Closely Held Corporations**

State anti-corporate farming restrictions
Developing the capitalization structure
Tax-free exchanges
Would incorporation trigger a gift because of severance of land held in joint tenancy? “Section 1244” stock
Status of the corporation as a farmer
The regular method of income taxation
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Corporate stock as a major estate asset
Valuation discounts
Dissolution and liquidation
Reorganization
Entity Sale
Stock redemption

**Social Security**

In-kind wages paid to agricultural labor

**Sale of Property**

Income in respect of decedent
Sale of farm residence
Installment sale including related party rules
Private annuity
Self-canceling installment notes
Sale and gift combined.

**Like-Kind Exchanges**

Requirements for like-kind exchanges
“Reverse Starker” exchanges
What is “like-kind” for realty
Like-kind guidelines for personal property
Partitioning property
Problems in Exchanges of partnership assets

**Taxation of Debt**

Turnover of property to creditors
Discharge of indebtedness
Taxation in bankruptcy.

**Self-employment tax**

Meaning of “business”

The seminar registration fees for each of multiple registrations from the same firm and for current subscribers to the Agricultural Law Digest, the Agricultural Law Manual, or Farm Estate and Business Planning are $225 (one day) and $400 (two days). The early-bird registration fees for nonsubscribers are $250 (one day) and $450 (two days). Nonsubscribers may obtain the discounted fees by purchasing any one or more of our publications. See www.agrilawpress.com for online book and newsletter purchasing.

Contact Robert Achenbach at 360-200-5666, or e-mail Robert@agrilawpress.com for a brochure.